



Agenda Date: 11/13/03
Agenda Item: 2C

State of New Jersey

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

IN THE MATTER OF THE PETITION OF PUBLIC)
SERVICE ELECTRIC & GAS COMPANY)
(PSE&G) AND ITS SUBSIDIARY, NEW JERSEY)
PROPERTIES, INC., FOR APPROVAL OF THE)
LEASE OF PROPERTY LOCATED ON)
BRUNSWICK AVENUE AT BLOCK 46E-1,)
LOT 52, BLOCK 46F-1, PART OF LOTS 13, 34,)
AND 35, 141, 142, 143, 150, 157, 166, AND 167,)
IN THE CITY OF TRENTON, COUNTY OF)
MERCER AND STATE OF NEW JERSEY, TO)
XARENA TRENTON LAND, L.L.C., FOR THE)
INITIAL ANNUAL RENT OF \$93,000.00 FOR AN)
INITIAL TERM OF THIRTY (30) YEARS)

ENERGY

DECISION AND ORDER

DOCKET NO. EM03070576

(SERVICE LIST ATTACHED)

BY THE BOARD:

On July 28, 2003, Public Service Electric and Gas Company ("PSE&G" or "Company") filed a petition with the Board of Public Utilities ("Board"), pursuant to N.J.A.C. 14:1-5.6, for the lease of real property ("Property") located in Trenton, Mercer County, New Jersey, to XArena Trenton Land, L.L.C. ("XArena"), a New Jersey limited liability company with offices at 2 Farm Tree Road, Pennington, New Jersey. A copy of the petition was served upon the Division of the Ratepayer Advocate ("Advocate").

The Property consists of approximately 9.3 acres of land, and is part of a larger parcel formerly used by PSE&G as the site of the Brunswick Avenue Gas Plant, a manufactured gas plant ("MGP") facility. The remaining portion of the parcel of approximately 1.33 acres contains the Company's gas metering and gas regulating station. It is the Company's understanding that XArena intends to use the Property for a motorcycle sports arena, quad racing arena, pro shop, restaurant, nightclub, wind-tunnel for simulated sky-diving, and other activities related to these purposes.

According to the lease agreement ("Agreement"), the XArena acknowledges that PSE&G has disclosed that environmental remediation activities on the Property relating to its previous use as an MGP facility were completed, and that the site is monitored by the New Jersey Department of Environmental Protection ("NJDEP"). The Agreement also states that the Property is leased "as is" for an initial annual rent of \$93,000.00 for the initial period between June 30, 2003 and to May 31, 2004. The rent is to be adjusted and increased at the end of each year to account for the cost of living based on the Consumer Price Index for All Urban Consumers, New York-Northeastern New Jersey. The rent is on a net basis, with the XArena having responsibility for all real estate taxes, insurance, maintenance, and repair. Under the terms of the lease, PSE&G retains the responsibility for any additional remediation, if required.

The Property is situated at 500-520 Brunswick Avenue, in the City of Trenton, New Jersey known and designated as Block 46E-1, Lot 52, Block 46F-1, part of Lots 13 and 34 and Lots 35, 141, 142, 143, 150, 157, 166, and 167 on the official tax maps of the City of Trenton. The Property is served with all available municipal services and utilities, and is located within an Urban Enterprise Zone. The total assessed value of the Property is \$607,937 and the book value of the Property is \$341,605.

The Property was appraised by Hendricks Appraisal Company of West Orange, New Jersey in May 2003, with an estimated rental value of \$93,000 annually. The Company did not advertise the Property for lease and is requesting a waiver of the advertising requirement of N.J.A.C. 14:1-5.6(b) due to the unique nature of the Property based upon the environmental remediation activities at this site. Pursuant to N.J.A.C. 14:1-5.6(i), the Board shall grant a waiver from the advertising requirement where the conditions therein are met.

On July 7, 2003, PSE&G deemed the Property no longer useful for utility purposes, and concluded that the Agreement would not impair the operating integrity of the remainder of the Property, or the Company's existing rights, or the Company's ability to provide safe, adequate, and reliable utility service to its customers.

By letter dated September 4, 2003, the Advocate submitted its comments in this matter. The Advocate neither objects to waiving the advertising requirement for the lease nor the lease of the Property by PSE&G to XArena. However, the Advocate is concerned about the proposed allocation of the annual rent to be paid pursuant to the lease. The Advocate notes that the MGP site, which is contained within the subject parcel of land, has been remediated by PSE&G, subject to NJDEP approval. The Advocate also notes that the petition indicates that PSE&G intends to record the entire annual rent as income to the Company.

The Advocate asserts that, since PSE&G's customers paid the full costs of site remediation, including carrying costs, through the Company's Remediation Adjustment Clause ("RAC"), customers should benefit from the lease of the Property. The Advocate notes that, on June 6, 2003, PSE&G filed its 2003 RAC filing, in Docket No. GR03060436, which is currently under

review. The Advocate further notes that, as a former MGP site, the Property is included in that review. The Advocate therefore recommends that the Board order that the issue of rents received pursuant to the proposed MGP site lease be included within the Company's current RAC proceeding.

After a review of the petition in this matter, the BOARD FINDS:

- ?? Pursuant to N.J.A.C. 14:1-5.6(i), the subject property is unique based upon environmental remediation activities and the need for an "as is" lease, such that the Board should grant a waiver of the advertising requirement.
- ?? A waiver of the advertising requirement pursuant to N.J.A.C. 14:1-5.6(b) will not affect the public interest.
- ?? The Petition is in compliance with all other aspects of N.J.A.C. 14:1-5.6.
- ?? The initial annual rent represents the fair market value of the Property.
- ?? The property is no longer used by PSE&G for the purpose which it was acquired, and no current or prospective utility use exists. PSE&G will continue to maintain its rights-of-way throughout the Property.
- ?? The lease of the Property will not adversely affect PSE&G's ability to provide safe, adequate, and reliable utility service to its customers or otherwise prejudice the public interest.
- ?? There is no other relationship between PSE&G and XArena except that of Lessor and Lessee.

Therefore, for the reasons stated above, the Board HEREBY GRANTS PSE&G a waiver of the advertising requirement of N.J.A.C. 14:1-5.6(b) in this matter.

The Board agrees with the Advocate that PSE&G's electric and natural gas customers paid the costs of remediating the Property and, therefore, should benefit from the rent revenues derived from the lease. However, the Board does not agree with the Advocate's recommendation that the issue of the rent derived from the lease be included within the Company's separate RAC proceeding for resolution but, rather that it is appropriate to dispose of this issue within the instant docket. The Board therefore FINDS that the rent revenues associated with this Property should be credited to the remediation adjustment clause to offset costs fully borne by the customers. The Board notes that the property as a whole would likely be unusable by a prospective lessee absent remediation of any portion of said property.

Therefore, the Board HEREBY DIRECTS that all rent revenues earned from the lease shall be used, upon receipt by PSE&G, to immediately offset the Company's RAC assessed to customers for the Property. Based upon the foregoing findings, the Board HEREBY APPROVES the lease of the Company's Property to XArena in the initial annual rent amount of \$93,000. The Board further DIRECTS the Company to file journal entries consistent with this Order.

This Order shall not affect or in any way limit the exercise of the authority of this Board to revisit the issues related to ratemaking treatment of this transaction in the Company's next rate proceeding.

DATED: 11/17/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)

KRISTI IZZO
SECRETARY

I/M/O PUBLIC SERVICE ELECTRIC & GAS COMPANY AND ITS SUBSIDIARY, NEW JERSEY
PROPERTIES, INC. FOR APPROVAL OF THE LEASE OF PROPERTY IN THE CITY OF
TRENTON TO XARENA TRENTON LAND, L.L.C.
DOCKET NO. EM03070576

SERVICE LIST

Gregory Eisenstark
Asst. Solicitor General
PSE&G
80 Park Plaza
Newark, NJ 07102

Nusha Wyner, Director
Division of Energy
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Seema Singh, Director
NJ Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07101

Ricky John, Ph.D.
Division of Energy
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Kenneth Sheehan, DAG
Dept. of Law & Public Safety
Division of Law
124 Halsey Street, PO Box 45029
Newark, NJ 07102

George Riepe, Asst. Director
Division of Energy
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102